

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

March 2, 2006

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 2, 2006, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas.

The following members were present: Harold Warner Jr., Chair; Darrell Downing, Vice-Chair; John W. McKay Jr.; Bob Aldrich; Elizabeth Bishop; M.S. Mitchell; Don Anderson; Denise Sherman; Bud Hentzen; Ronald Marnell; Hoyt Hillman; Morris K. Dunlap and Michael Gisick (in @ 1:34). Bill Johnson was not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Scott Dunakey, Associate Planner; David Barber, Advanced Plans Manager and Rose Simmering, Recording Secretary.

❖ **SUBDIVISION ITEMS**

1. Consideration of Subdivision Committee recommendations from the meeting of February 23, 2006.

- 1-1. **SUB 2006-08: One-Step Final Plat -- HEDGE CREEK ESTATES ADDITION**, located on the southeast corner of 247th Street West and 45th Street North.

NOTE: This site is located in the County in an area designated as "rural" by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Andale Area of Influence.

STAFF COMMENTS:

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval. **A memorandum shall be obtained specifying approval of the proposed individual alternative sewer system from County Code Enforcement along with a maintenance agreement.**
- B. In conformance with the Urban Fringe Development Standards, for individual domestic wells that are proposed, a water availability evaluation must be provided to **Sedgwick County Code Enforcement** to assure the availability of an adequate, safe supply of water that does not impair existing water rights. Easements shall be dedicated for potential future extension of public water.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved subject to revisions.**
- E. **County Engineering** needs to comment on the access controls. The plat denotes two street openings along 247th St. West and an access opening to Block A and Block B. **The access controls are approved.**
- F. In accordance with Access Management Regulations, complete access control is required for arterials intersecting with local streets. Complete access control of 75 feet is needed along Hedgecreek and Lost Point.
- G. **Sedgwick County Fire Department** advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- H. The applicant shall guarantee the installation of the proposed streets. Lost Point Circle and Hedge Creek Circle east of Lost Point should be built to 36' rock standard or paved to County standards.
- I. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.
- J. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. The MAPC signature block needs to reference "Harold L. Warner, Jr., Chair".
- M. Lot 12, Block A, does not conform with the 200-foot lot width standard, which is measured at the building setback line. An increase in the distance of the building setback from the road would meet the standard.
- N. **GIS** needs to comment on the plat's street names. **New street names are needed.**
- O. For lots fronting on cul-de-sacs, the lot frontage is required to be 50% of the required lot width (200 feet). Lot 12, Block A does

not meet this 100-foot frontage requirement.

- P. "Lots, Blocks, Reserves and Streets" shall be referenced in the plat's text.
- Q. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- Y. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Z. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

NEIL STRAHL (Planning staff presented the staff report) An issue came up at last weeks Subdivision meeting in regards to the reserves. They extend diagonally from the southeast corner of the plat to the northwest corner. The reserves are intended for floodway easements and they are designated on the plat's text to be owned and maintained by the Homeowners Association.

Last week the applicant proposed an alternative design as opposed to what you see here. Instead of one large reserve platted south of the street, he is proposing multiple reserves, each to be owned and maintained by the adjoining property owner. So this Reserve B would be split up into eight separate reserves. County Engineering opposed that particular alternative as did the Subdivision Committee, and the plat was approved in the design as you see up on the screen. The applicant is here today to appeal that condition, and we also have Jim Weber from County Public works to answer any questions.

MARK SAVOY, Savoy Company, P.A., 535 S. Emporia, Suite 104, Wichita, KS 67202 representing the applicant {handed out letter}. What I'd asked was that the Subdivision Committee consider approving the plat allowing us to extend our lot lines out to the center of the drainage areas, including this lot and still encumber that same area that is encumbered with the reserve right now as a drainage and floodway easement rather than a reserve so that each lot has ownership out to the center of the drainage area. I'm here today to make it a matter of record, and ask that you consider making that same motion.

One of the primary reasons that came up is they had a potential buyer for one of the properties and he was concerned about the access that would go on around behind his house, and he felt like it would make it easy for people to trespass onto his lot since he would not have control of that open area since it would be jointly owned by members of a Homeowners Association. The developer originally asked that we extend them out that way, and going through a sketch plat process with the County, they suggested that they would probably suggest a reserve. I talked to the owner about it, and we went ahead that way and sort of wished that we would have submitted it the way that we started out. The last plat that he had done was just with easements and didn't have reserves, so his expectation wasn't that he was going to have a reserve and deal with this kind of situation.

MCKAY You want to change this. Where is the drawing to look at what you are proposing?

SAVOY Mainly because I submitted this to meet what the County said they would ask for, it is just a matter of extended lot lines directly out to the center of that reserve. With the 100% vote at Subdivision Committee to keep it as a reserve at Subdivision, we didn't really try to fool ourselves. It was a surprise since the last plat that we had done was all easement, and the preference of the developer was easement, and he has asked me to make sure that everybody knew that he had that preference.

BISHOP I don't have the ability to see the map very well. Are there two reserves on either sides of the street?

SAVOY Yes.

BISHOP So pedestrian access wouldn't be a problem? Is there pedestrian access or a maintenance access from that lower cul-de-sac?

SAVOY The problem is they don't want the illusion that this is a public area that anybody can walk around and enjoy. The buyer didn't want to share his backyard with the adjacent neighbors. He wanted the ability to say this is the limit of my property, and without my invitation I don't want you in my backyard.

BISHOP Is that an access easement or maintenance easement off of that cul-de-sac?

SAVOY There are some drainage easements off of the cul-de-sac, to allow drainage to go into the drainage area off of the streets, so no it is not an access easement. There is only street right-of-way between the two reserves on the north end as far as access off of a public road.

MITCHELL On the preliminary plat there is a dam near the south end of the large reserve so that at least part of that area is a lake. Is part of the area along the main creek clear at the bottom also impounded part of the time so that there is water standing?

JIM WEBER, County Engineering If we look at aerial photos, I believe there is water standing in that southern one most of time.

MITCHELL So, if lot lines were extended, and if we carried it to its logical conclusion we could have a fence at the extension of those lot lines going into the lake?

WEBER That is part of the concern. One of the things that happens is when we have a buyer who wants to protect all this property from everybody, and he owns everything out to a certain point, the owner has a tendency to start stringing fences and going out there with buildings. It is just not as clear that is an area that needs to be preserved for drainage purposes. We have had places where people have literally run barbed wired fences through the middle of ponds.

Our concern is really if we put these kinds of areas into common reserves and put the responsibilities for maintenance with the Homeowners Association, which can be restricted to people that surround that particular water feature or it can be that whole subdivision. That is their choice. If they can define a Homeowners Association that is responsible for it there is a tendency for those Homeowners Associations to take better care of these areas and maintain them so that ultimately a public body does not have to come in and do it. If those Associations don't do it so well and a public body has to come in, the public body communicates with the Homeowners Association rather than having to come back and negotiate with every owner that has property going out into the middle of this water feature to get in there and do the proper kind of work.

The other point that I would like to make is that the City and the County have been working on a joint Flood Plain Management Task Force for over a year, and one of their seven initiatives is to go out and do things to preserve the natural drainage ways so that we don't have to make major improvements in the future.

WARNER Jim, is it possible to define the area and restrict fences and stuff if they own the property?

WEBER It's possible to put that on paper.

MITCHELL It's possible, but not practical.

HENTZEN Is the public access restricted to the people in the Homeowners Association or could someone say, "Let's go in there and use their lake"?

WEBER They remain private property. They're just owned and maintained by a group rather than by eight different individuals. So, you and I wouldn't have the right to go in there and go fishing or throw a party.

MARNELL If the Homeowners Association maintains ownership of that reserve could they put a fence along that northern street to block access to that area to the homeowners?

WEBER As long as it doesn't interfere with the drainage structure that is under the street.

MARNELL I thought part of the reason was that you couldn't put fences in the reserve or how does work?

WEBER The fence that comes across the reserve and blocks the drainage. What I am saying is that the street is essentially a dam and it has a structure coming under it, a box culvert or something. You can go up and over and around the things but you can't block the actual structure. Once you get past the structure, then the natural drainage is out in the creek.

MARNELL There is not a problem with the Homeowners Association themselves putting a barrier fence across there to block access?

WEBER As long as they don't block the drainage.

MARNELL Just to keep the individual homeowner from extending down there?

WEBER You could end up if you follow those lot lines ... you could end up with four to five fences through there.

MOTION: To approve, subject to staff comments and citing the findings in their report.

ALDRICH moved, **BISHOP** seconded the motion, and it carried (13-0).

- 1-2. **SUB 2005-136: Final Plat -- NICHOLSON COMMERCIAL ADDITION**, located on the northwest corner of Ridge Road and 53rd Street North.

NOTE: This unplatted site is located in the County within three miles of Wichita's city limits. This site is in an area designated as "rural" by the Wichita-Sedgwick County Comprehensive Plan. The site has been approved for a zone change (ZON 2005-16) from RR, Rural Residential to LC, Limited Commercial and OW, Office Warehouse. It is located in the Maize Area of Influence.

STAFF COMMENTS:

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval. **A restrictive covenant is required that prohibits non-domestic wastes on the site until public sewer is available. The applicant will meet with County Code Enforcement regarding this issue.**
- B. In conformance with the Urban Fringe Development Standards, for individual domestic wells that are proposed, a water availability evaluation must be provided to **Sedgwick County Code Enforcement** to assure the availability of an adequate, safe supply of water that does not impair existing water rights. Easements shall be dedicated for potential future extension of public water.
- C. **City of Wichita Water and Sewer Department** requests a petition for future extension of sanitary sewer and City water services.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **County Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- F. The plat denotes complete access control along Ridge Road and four joint openings along 53rd St. North. **County Engineering has approved the access controls including the easternmost drive being designated as a temporary full movement driveway, which will become a rights-in/rights-out driveway upon determination of the appropriate engineer.**
- G. The joint access openings shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveways within the easements should also be addressed by the text of the instrument.
- H. **Sedgwick County Fire Department** advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- Q. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov).

Please include the name of the plat on the disc.

HILLMAN On Item A in the staff report, has the non-domestic waste been handled properly?

STRAHL The applicant did not have a specific use in mind but the condition regarding the prohibition on non-domestic waste is a standard condition we have for all industrial plats.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **DOWNING** seconded the motion, and it carried (12-0).

1-3. SUB 2006-02: Final Plat -- USD 385 ADDITION, located north of Central and on the west side of 159th Street East.

NOTE: This is an unplatted site located in the County adjoining Wichita's city limits and annexation is required. The site is currently zoned SF-20, Single-Family residential and will be converted to SF-5, Single-Family Residential upon annexation.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential.
- B. Municipal services are available to serve the site. Unless petitions for extensions are provided, in lieu of assessment fees are needed for sewer lateral and water main.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. City Engineering has approved the drainage plan.
- D. Additional right of way is required in the area of KTA bridge and fill. The applicant shall meet with County Engineering to determine the width of right-of-way needed for future bridge widening.
Additional right-of-way has been platted as requested.
- E. County Public Works recommends Wichita and Andover resolve which city will annex and maintain 159th St. E.
- F. Traffic Engineering has requested right/left turn lanes on 159th for the north entrance.
- G. City Engineering requests a petition for the paving of the north half of Sharon Lane.
- H. City/County Engineering needs to comment on the access controls. The plat proposes two openings along 159th St. East Access controls are approved.
- I. Since drainage will be directed onto the Kansas Turnpike, a letter shall be provided from KTA indicating their agreement to accept such drainage.
- J. Provisions shall be made for ownership and maintenance of the proposed reserve. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate

agencies to determine any such requirements.

- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: Defer for two weeks.

WARNER moved, **MCKAY** seconded the motion, and it carried (12-0).

1-4. SUB 2005-148: Final Portion of Overall Preliminary Plat -- BELLECHASE ADDITION, located east of 127th Street East and north of Harry.

NOTE: This site is located in the County adjoining Wichita's city limits and annexation is required. The site is currently zoned SF-20, Single-Family Residential and will be converted to SF-5, Single-Family Residential upon annexation. The site is located within the 100-year floodplain.

This final plat consists of the northeastern portion of the overall preliminary plat approved for the site and represents the first phase of development. The street layout is consistent with the preliminary plat.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential and allow for the lot sizes being platted.
- B. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. City/County Engineering needs to comment on the status of the applicant's drainage plan. County Engineering needs to review drainage plan. County Engineering advises that no contour elevations are shown in the area of Spring Creek Branch to determine the limits of the FEMA flood plain. City Engineering has requested an off-site drainage agreement from the property owner to the west and south.
- E. The platted utility easements along the perimeter of the plat on the east and north should be labeled to include drainage.
- F. County Public Works advises that the City of Wichita needs to annex 127th Street East abutting plat.
- G. The plat's text should include language that protects the public from cost to reconstruct improvements in Reserves A, B, C and D.
- H. Traffic Engineering needs to comment on the need for any improvements to perimeter streets. A left-turn lane petition is needed.
- I. The plat denotes two street openings along 127th St. East. Access controls are approved.
- J. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- K. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.
- L. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- M. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the

owner(s) by the governing body.

- N. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- O. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- P. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City of Wichita.
- Q. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- R. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- S. In the title block "An Addition to Wichita, Sedgwick County" needs to be added.
- T. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- V. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- W. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Y. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- BB. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- CC. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **DOWNING** seconded the motion, and it carried (12-0).

❖ **PUBLIC HEARINGS – VACATION ITEM**

2-1. VAC 2006-04: Request to Vacate a Platted Street Right-of-Way.

APPLICANTS:

Darrell & Debra Staats

LEGAL DESCRIPTION:

Generally described as the platted 30-foot wide half-street Osage Avenue ROW as dedicated on the Hankins 2nd Addition, that is between Lot 11, Hankins 2nd Addition (west), Lot 1, Block 1, the Belton Addition (east), Hazel Avenue (south) and sewer easement (north, Ref: D-346-UP) all in Wichita, Sedgwick County, Kansas

<u>LOCATION:</u>	Generally located east of Seneca Street, south of 51 st Street South and north of Hazel Avenue (Council District IV)
<u>REASON FOR REQUEST:</u>	Revert to private property
<u>CURRENT ZONING:</u>	The site is platted undeveloped half-street public right-of-way. All abutting properties are zoned "SF-5" Single-family Residential

The applicant is requesting vacation of the 178.6-foot long (x) 30-foot wide, portion of the platted half-street ROW of Osage Avenue as dedicated on the Hankins Addition. Osage does not extend north of this site. There are no utilities, manholes, water or sewer lines in this portion of the Osage ROW. In comments taken from SUB2004-90 (the Belton Addition, recorded with the Register of Deeds, February 10, 2005) item "C" states that this portion of Osage should be vacated; see exhibit. There is a platted 30-foot street side setback that runs parallel to the proposed vacated ROW on Lot 11, Hankins 2nd Addition, which is the applicant's lot and which he would also like to vacate. The Hankins 2nd Addition was recorded with the Register of Deeds April 5, 1951.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted Osage Avenue half-street ROW and platted setback, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time February 9, 2006 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted street ROW and platted setback and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted Osage Avenue half-street ROW and platted setback described in the petition should be approved with conditions;
- (1) Provide staff with a restrictive covenant tying and binding Lot 11, the Hankins 2nd Addition to the abutting vacated portion of the platted Osage Avenue half-street ROW
 - (2) Vacate the platted 30-foot street side yard setback on the east side of Lot 11, the Hankins 2nd Addition, and replace with the interior side yard setback for the "SF-5" zoning district. Dedicate a 30-foot front yard setback onto the vacated ROW to match the existing platted 30-foot front yard setback on Lot 11, Hankins 2nd Addition. This will run parallel to the south side of the vacated ROW.
 - (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
 - (4) All improvements shall be according to City Standards.
 - (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County or franchised utilities and recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide staff with a restrictive covenant tying and binding Lot 11, the Hankins 2nd Addition to the abutting vacated portion of the platted Osage Avenue half-street ROW.
- (2) Vacate the platted 30-foot street side yard setback on the east side of Lot 11, the Hankins 2nd Addition, and replace with the interior side yard setback for the "SF-5" zoning district. Dedicate a 30-foot front yard setback onto the vacated ROW to match the existing platted 30-foot front yard setback on Lot 11, Hankins 2nd Addition. This will run parallel to the south side of the vacated ROW.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
- (4) All improvements shall be according to City Standards.
- (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County or franchised utilities and recorded with the Register of Deeds.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **HILLMAN** seconded the motion, and it carried (13-0).

❖ **PUBLIC HEARINGS**

3. **Case No.: CUP2006-03 DP256 Amendment #2** – Donald & Karen Baxter (owner); Spangenberg Phillips Architecture, Randy Phillips (agent) Request Amendment to the Collective Community Unit Plan on property described as;

Part of Lot 3, Block 1, The Collective, an Addition to Wichita, Sedgwick County, Kansas, described as: Beginning at the Northeast corner of said Lot 3; thence bearing South 00 degrees 04'10" East along the East line of said Lot 3, a distance of 235.00 feet; thence South 89 degrees 55'50" West, a distance of 30.00 feet; thence bearing North 47 degrees 25'08" West, a distance of 213.85 feet; thence bearing North 45 degrees 25'50" East, a distance of 88.88 feet to the PC of a curve to the right, having a radius of 97.00 feet; thence along said curve through a central angle of 44 degrees 30'00", an arc distance of 75.34 feet to the PT of said curve; thence bearing North 89 degrees 55'50" East, a distance of 55.90 feet to the point of beginning. Generally located Southeast corner of K-96 and 21st Street North.

BACKGROUND: The applicant requests a minor amendment to DP-256, The Collective Community Unit Plan. The applicant proposes to reduce the CUP 35-foot building setback along Founders Street for Parcel 3. The proposed setback reduction would be from 35 feet to 26 feet, a nine-foot or 25% reduction. The proposed use is an office facility. The applicant proposes to place an outdoor patio on the southeast corner of the building, and connect the building with a sidewalk to the sidewalk along Founders Street (see the attached site plan).

The CUP limits uses in Parcel 3 to those permitted in "NR" Neighborhood Retail zoning. The CUP has a pedestrian circulation requirement, architecture review requirement, and requires screening of all dumpsters, loading docks, and mechanical systems.

All abutting property is zoned "LC" and within the same CUP. Much of the surrounding property is developed with institutional uses. Trinity Academy, a private high school is located to the east, across Founders Street from the site. Messiah Baptist Church and Magdalene Catholic Church and school are across 21st Street North. A "GO" General Office zoned medical office is south of the CUP.

CASE HISTORY: The application area was rezoned to LC with a CUP in 2001, and platted as the Collective Addition in 2001.

ADJACENT ZONING AND LAND USE:

NORTH: "LC", "SF-5"	Commercial development, church and school
SOUTH: "GO"	Medical office
EAST: "SF-5"	Private high school
WEST: "LC"	Vacant commercial property, K-96

PUBLIC SERVICES: Founders Street is a paved local street with a 30-foot half-width right-of-way at the site. The Collective CUP has good access to the K-96 pedestrian and bicycle trail. All other public services are available at the site.

CONFORMANCE TO PLANS/POLICIES: The *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* commercial locational guidelines recommend that commercial uses should be located adjacent to arterial streets; in compact clusters; and to have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas. Office locational guidelines recommend location adjacent to arterial streets; local, service-oriented offices to be incorporated with neighborhood/community scale commercial development; and low-density office be used as a transitional land use between residential uses and higher intensity uses.

The Comprehensive Plan Objective E states: "Promote pedestrian/bicycle-oriented improvements to create alternative transportation networks to major destination points in the City and County." Strategy V.E2 of that section proposes to "increase the convenience of pedestrian/bicycle access to and within commercial and employment areas." Placing buildings closer to street sidewalks, as proposed in this application, makes access more convenient for pedestrians and cyclists.

The Unified Zoning Code (UZY) Section III-C.2.a states that the purpose of the Community Unit Plan (CUP) is to "...protect the public safety, convenience, health and general welfare through standards and provisions that establish requirements as to lot coverage, height, setback and screening ...". The CUP section of the UZY establishes development standards that include a 35-foot building setback from all street rights-of-way. This portion of the UZY goes on to state that the Planning Commission or Governing Body may modify or waive the setback requirement as a part of approval or amendment of a CUP, where the objectives of the Comprehensive Plan and good planning practice are furthered. The Planning Commission or Governing Body must set forth the specific reasons for such modification and an explanation of how such modification or waiver meets the criteria and purpose of this section of the UZY.

RECOMMENDATION: The proposed CUP amendment, reducing the building setback along Founders Street by 25%, should have no negative effect on community facilities or surrounding property owners. The Objectives and Strategies of the Comprehensive Plan encourage improved pedestrian access, which can be achieved with reduced building setbacks. The UZY setback standard for CUPs (35 feet) can be reduced when planning objectives are met, and there is no negative impact on surrounding property, the neighborhood, or public facilities.

Based on this, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to the submitted site plan.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding land uses include churches and schools to the north and east, medical office uses to the south, surrounding commercial uses within the same CUP, and a highway and pedestrian/bicycle path to the east. The requested 25% setback reduction should not have a negative impact on the surrounding neighborhood or land uses, and will make the site more accessible for pedestrians.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed under the 35-foot setback requirement of the existing CUP. However, the requested setback will allow better use of the site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The setback reduction should have no negative impact on surrounding commercial or institutional uses; no residences are in the immediate area. Landscape requirements will not be reduced, and visual aesthetics along Founders Street will not be negatively impacted.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is in conformance with the Wichita Land Use Guide of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan*, and with the objectives and strategies of the Comprehensive Plan. The Unified Zoning Code permits reduction of CUP building setbacks when the objectives of the code and the Comprehensive Plan are met.
5. Impact of the proposed development on community facilities: The proposed building setback reduction will have no negative impact on community facilities, and will encourage better use of surrounding pedestrian facilities.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **HENTZEN** seconded the motion, and it carried (13-0).

4. **Case No.: CUP2006-04 DP169 Amendment #3** – Elliott Werbin (owner); Cingular Wireless (lessee/applicant); Polsinelli, Shalton, Welte, Suelthaus, P.C., c/o Curtis Holland (agent) Request Amendment to the Spencer Gardens Community Unit Plan on property described as;

Lot 5, Block 1, Spencer Gardens 2nd Addition, Sedgwick County, Kansas.

A 30-foot by 30 foot Lease Area situated in Lot 5, Block 1, Spencer Gardens 2nd Addition, Sedgwick County, Kansas, more particularly described as follows:

COMMENCING at the Southwest corner of an EXCEPTED TRACT of said Lot 5, as described in Warranty Deed recorded on Film 2055, page 0904; thence South 89 degrees 48'54" East, along the South line of said EXCEPTED TRACT, a distance of 68.00 feet to the POINT OF BEGINNING, said point also being the Northeast corner of an existing 20 foot by 30 foot Lease Area as recorded in Film 2055, Page 900; thence continuing South 89 degrees 48'54" East along the North line of said EXCEPTED TRACT, a distance of 30.00 feet; thence South 00 degrees 11'06" West, a distance of 30 feet; thence North 89 degrees 48'54" West, a distance of 30 feet; thence North 00 degrees 11'05" East along said East line, a distance of 30.00 feet to the POINT OF BEGINNING. Generally located West of South Oliver and south of Pawnee.

BACKGROUND: The applicant is requesting to amend Parcel 5 of DP-169 Spencer Gardens Community Unit Plan (CUP) to permit the construction of a second wireless communication facility, which would be a 150-foot monopole structure (see attached "Site Plan & Elevation"). The proposed site is zoned "GC" General Commercial. This will be amendment #3 of DP-169 Spencer Gardens CUP. A similar structure of 120 feet was approved by amendment #2 of the referenced CUP, but that amendment limited Parcel 5 to a single wireless facility, which has since been built and is occupied by two carriers, as designed.

The proposed tower would be sited on a 900 square foot area situated on Parcel 5 of the Spencer Garden CUP, abutting the east boundary of the existing tower site. The subject property is located approximately 730 feet south of Pawnee Avenue and 300 feet west of Oliver Avenue. The proposed tower would be located in a 30-foot by 30-foot compound with the tower and associated equipment shelter (see attached "Site Plan & Elevation") located near the center of the compound. A 6-foot chain link fence topped with three strands of barbed wire would serve as security for the compound. Additional screening is not required, as there exists no adjacent residential uses or zoning. Access to the compound would be provided through Parcel 5, as is the case with the existing tower.

The character of the surrounding area is mostly commercial. The property north of the site is zoned "LC" Limited Commercial and is a retail use. East of Parcel 5 is Oliver Avenue and across Oliver is zoned "LC" Limited Commercial and developed with commercial and office uses. The balance of Parcel 5 is zoned "GC" General Commercial and occupied by a pawnshop with outdoor vehicle storage. South of Parcel 5 is a drainage area, which is approximately 250 feet in width. The property west of the site is zoned "LI" Limited Industrial and is currently vacant.

The applicant has indicated that the proposed tower is needed by Cingular to provide wireless service northwest of McConnell Air Force Base. The applicant has indicated that possibilities (such as locating on existing towers in the area or rebuilding the existing tower) other than the construction of a new tower have been pursued and were not feasible for technical and economic reasons. A structural analysis performed on the existing tower demonstrates that the structure is incapable of accommodating a height extension and additional equipment. The attached "Applicant Letter" demonstrates the economic infeasibility of requiring the applicant to replace the existing tower, in lieu of simply erecting a second one as this application requests. The applicant has identified other towers in the general vicinity with available space. However, none of those locations effectively address the applicant's target service area.

The tower has received approval from the Federal Aviation Administration (see attached "FAA Determination"), for a facility not to exceed 175 feet in height. The proposed structure is 150 feet, which is within the FAA-approved parameters.

CASE HISTORY: This request was originally submitted as an administrative adjustment (BZA2005-00065). However, it was determined by the Planning Director that the request was not a valid administrative adjustment. Staff recommended that the

applicant resubmit the request as the current CUP Amendment application (DP-169, Amendment #3). The subject property is platted as Lot 5, Block 1, Spencer Gardens 2nd Addition, recorded June 6, 1988 and is located in Parcel 5 of the Spencer Gardens CUP. DP-169 Amendment #1, approved June 19, 1990, changed the uses in Parcel 5 to allow outdoor vehicle and equipment storage. A zone change from "LC" Light Commercial (now "LC" Limited Commercial) to "C" Commercial (now "GC" General Commercial) was approved with Amendment #1. DP-169 Amendment #2, approved July 31, 1997, changed the uses in Parcel 5 to allow the construction of one 120-foot monopole wireless communication facility.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"	Retail development
SOUTH: "GC"	Pawn shop; outdoor vehicle storage
EAST: "GC"; "LC"	Outdoor vehicle storage; vehicle sales; Office use
WEST: "LI"	Vacant

PUBLIC SERVICES: No municipally supplied utility services are required. Access to the site will be from Oliver Avenue, through Parcel 5 as is the case with the existing facility. Oliver Avenue is classified as a principal arterial.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate before new support structures are to be considered, placement possibilities should be investigated that are located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The proposal does not conform to the adopted location guidelines. However, if the aforementioned support opportunities are not available, then new support structures may be considered, subject to specific design guidelines.

The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The proposal generally conforms to adopted design guidelines.

RECOMMENDATION: As noted in the previous section, the proposal does not conform to the adopted design guidelines. However, it is the opinion of staff that the proposal conforms to the general spirit and intent of the guidelines, given the feasibility of the alternatives. The applicant has demonstrated the need for another facility in the general vicinity. A structural analysis commissioned by the applicant determined that the existing facility, which is owned by a competitor, is unsuitable for the needed expansion. Furthermore, the applicant has demonstrated that replacing the existing structure is not economically feasible and that other support structures are not available to meet their service area needs. Given these facts, it is the opinion of staff that the proposed facility and its position adjacent to an existing tower represents a better option than requiring the development of a pristine location.

Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **APPROVED** subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all necessary permits and shall construct the wireless communication facility within one year of approval by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- F. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- G. The applicant shall comply with all conditions of FAA approval and submit a copy of the FAA approval to the Director of Airport Engineering for the City of Wichita.
- H. The facility shall be lighted in compliance with all applicable federal, state and local rules and regulations.
- I. The site shall be developed and operated in compliance with all federal, state and local rules and regulations.
- J. The 30-foot by 30-foot compound for the wireless communication facility shall be designated on the CUP plan, and the uses allowed for Parcel 5 shall be modified to add: "Wireless communication facility only in designated area."
- K. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this amendment by the MAPC or Governing Body, as applicable, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The character of the surrounding area is mostly commercial. The property north of the site is zoned "LC" Limited Commercial and is a commercial use. East of Parcel 5 is Oliver Avenue and across Oliver is zoned "LC" Limited Commercial and developed with mostly retail uses. The balance of Parcel 5 is zoned "GC" General Commercial and occupied by a pawnshop with outdoor vehicle storage. South of Parcel 5 is a drainage area, which is approximately 250 feet in width. The property west of the site is zoned "LI" Limited Industrial and is currently vacant. Additionally, the proposal is directly adjacent to an existing wireless communication facility.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "GC" General Commercial, and has been developed as a parking lot for commercial use. The site also could be used for outdoor display and storage per an approved amendment of the CUP. A CUP amendment may be granted to permit a wireless communication facility in the "GC" district that does not conform to the guidelines of the Wireless Communication Plan; however, the facility should conform to the guidelines as much as possible.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The location adjacent to an existing wireless facility and the design of the proposed monopole tower should mitigate impacts on nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposal does not conform to the Location Guidelines of the Wireless Communication Master Plan, which indicates that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. However, the proposal generally conforms to the Design Guidelines of the Wireless Communication Master Plan, because it: 1) preserves the pre-existing character of the area; 2) minimizes the height, mass, or proportion; 3) minimizes the silhouette; 4) will be placed in areas where trees and/or buildings obscure some or all of the facility; 5) will be screened through landscaping, walls, and/or fencing; and 6) will not use strobe lighting.
5. Impact of the proposed development on community facilities: Access to the site will be through private property with no additional access to public streets required. No negative impacts on community facilities are anticipated.

SCOTT DUNAKEY Planning staff presented the staff report.

ALDRICH Pertaining to the footage of the compound, you've got down here 30' X 30', am I correct or incorrect assuming that the policy should be 50' X 50' or something else on the base of that?

DUNAKEY I'm not aware of there being a policy for the size of the actual fenced in facility.

ALDRICH There is not a minimum?

DUNAKEY No, there is not a minimum.

ALDRICH There is not an alternative site?

DUNAKEY No. They did do an analysis on the other cell tower sites that are in the vicinity but none of them would allow them to reach their target service area.

ALDRICH According to the staff report on the conformance to plans/policy, is that the proposed site that does not conform to the adopted locational guidelines? You just got done saying earlier that it did, but here it says it doesn't.

DUNAKEY Those are the guidelines but it also does give leeway that if it can't met the locational criteria that a new site can be approved as long as it does meet the design criteria.

BISHOP As I understand the current tower that is there is 120-foot tall; the application is for a 150-foot tower and the FAA has indicated that they would be approved up to 175 feet. In the design for this, I see that it shall be designed and constructed to accommodate communication equipment for at least three wireless service providers. If Cingular is one of them, would it be possible for another provider to come in and say I have to be at 170 feet, and therefore this tower won't do and file a different case?

DUNAKEY Technically outside of this request it would be. However, one of the conditions staff put on was limiting it to 150 feet. So, if they were to need an additional extension on that they would have to get additional approval from this body.

BISHOP I mean physically engineering wise is that possible?

DUNAKEY If they would want to design it such that they it would accommodate an extension, that would be up to them. At this point given the conditions that staff has requested, it would be their call whether or not they would like to engineer it to such standards. The requirement is that it does have to accommodate two additional carriers.

BISHOP Could we require it to accommodate to the possibility to reach additional height, in order to encourage future co-location?

DUNAKEY I don't know why not.

HILLMAN So, you have evaluated the area. Do you happen to know how tall the tower is that is four blocks south of this about on 37th Street?

DUNAKEY I don't know that exact location.

HILLMAN The closer that you get to McConnell I see additional problems there, which we have FAA approval for this tower.

DUNAKEY Generally speaking the closer you get to an airport the lower the FAA likes those facilities.

DALE MILLER There is a way that they can come in ask for a 25% increase in the height administratively without it coming back to the MAPC. The Code requires that this be built to a standard that accommodates at least 2-3 other carriers depending on the height, two carriers in this case.

BISHOP Could MAPC require that engineering wise, physically, the design of it would accommodate additional height?

MILLER The Code requires that, but the Code required that on the first one. It is just that part of what we are running into is a change in the technology of what is going on in that the antennas and the wiring and everything that goes into it is getting heavier because there are more of them, and based on their study of the original one, even though it was originally supposed to be built to accommodate more, it won't carry it because of the weight.

BISHOP Do we need to change what we require?

MILLER In this case, knowing what is coming on they will have to submit a plan to accommodate those additional two carriers whatever that is.

BISHOP How about additional height?

MILLER They can do the additional height administratively by up to 25 percent. If you approve this for 150 feet they can ask for a 25% extension, but according to the FAA they can't exceed 175 feet.

MITCHELL Dale, the extension in height can be made if it complies with all of the guidelines? Because this one doesn't.

MILLER Administratively because of the Conditional Use. I believe they would be able to ask for that in a typically situation.

CURTIS HOLLAND Attorney for Cingular Wireless I am here to answer any questions you might have. Otherwise, we would simply ask for your approval. This did go to the DAB last night and was recommended to this body for approval. One board member, who is a resident in the neighborhood that is closest, several hundreds of feet away to the north, said that their board had met and had no opposition to the facility being installed here.

BISHOP My question is about engineering design. The application is for 150 feet. Is it possible to design it in such a way that additional height to 170 feet would be possible?

HOLLAND Yes, it could be engineered to allow for an extension to a greater height than 150 feet.

BISHOP Based on your current design is that possible?

HOLLAND I'm not sure about the current design whether or not it is designed to allow for, say, a 25-foot extension. It certainly would be designed to accommodate a 150-foot tall tower. Would they do it is that your question?

BISHOP Yes.

HOLLAND I don't know the answer to that, I would probably say "yes." I don't know what the cost would be, but it is a cost that would be unnecessary for our purposes. So, in one sense I would think that would be an imposition on my client.

BISHOP We continually get resistance to co-location. What I am looking for is something that would help us structure the ability for that tower to carry out the purposes or the intent of our policy and encourage co-location as much as possible, so yet another tower would not be required.

HOLLAND The carriers themselves, Cingular, not say a tower developer, are absolutely interested in co-location and do co-locate many, many, times.

DUNLAP If I remember correctly, height is not necessarily a problem, it is density of usage. We have to have more towers because we have more people making calls, not because they are not high enough.

HOLLAND I don't think that is an absolute statement, height does become important. It depends on what you are trying to accomplish with your particular facility. If you are trying to cover long stretches along the highway, a taller facility is important. If you are in town, taller facilities aren't as important as where it is placed.

MARNELL Given the fact that you have another facility with existing carriers that has that tower fully leased, what is the prospect of more carriers locating on this facility?

HOLLAND I would say they are probably good. I can't commit to you that another carrier would come in and take a space. I would commit and stipulate that we have to, per the Code, allow for co-locations. We do have agreements with all the other carriers and we would allow them on the facility. We are restrained here significantly by the location of McConnell Air Force base to our south. I would guess there are other carriers that have similar constraints.

HENTZEN We are suggesting the tower be built for three providers. What are the changes of having four to five providers? Is it always limited to three or should it be limited to three?

HOLLAND Providers, we think of as another cellular company, but there are other providers, paging companies, etc. What we are in agreement with is that we would build the tower to accommodate three, including our standard platform, which is the heavier style to carry antennas for the cellular facilities, and they are a little heavier than say a paging company.

ALDRICH Back in July 1997, it was changed for the use to allow construction for 120-foot tower. Was that the limit of 120-foot or is there not a cap on that?

MILLER I am guessing that is what they asked for, that was the height they asked for or at the time that FAA may have restricted them to, but typically the heights come from the carriers themselves knowing where they need to be to fit the rest of their system.

DUNAKEY The amendment did limit that to 120 feet.

ALDRICH We are asked to change that height, right?

DUNAKEY For the existing tower?

ALDRICH For that parcel was that a cap of 120-foot?

DUNAKEY This structure would be allowed 150 feet by the recommendation that is before you.

BISHOP This is not a motion, but I would recommend something that would require a tower at a 150 feet with the flexibility to go up to at least 170 feet and give the FAA about 5 feet of wiggle room, so that it would encourage the possibility of future co-location.

MITCHELL Would you amend your motion to make the limitation in height to whatever was approved by FAA?

BISHOP Yes, I would.

MCKAY Are we imposing construction standards to the cellular companies now? I don't think that is our call.

MARNELL If that turns into motion, which I am not sure it has, I'm going to oppose it. Because the tendency within the PCS and cellular industry right now is problem spaced by capacity and there is very few of them that have to do with reach. So, you are going to see more facilities mixed with them. So, throwing the economic burden of increasing the price of an existing tower, for a monopole in this case, to be able to be extended in the future, which in absolutely all likelihood will never happen, seems to make the price of business to go up, which I see no benefit to. With a tower next to this one there is a limited number of carriers out there.

BISHOP Let me just say in response, but as I recall we have done this based on staff recommendations and as part of the staff requirements, we have done exactly this in the past, to require a tower to have the flexibility for increase height in order to maintain the intention that co-location would occur.

MOTION Approve the application per staff comments with the addition of a requirement that they design a tower with the flexibility to increase height up to the FAA maximum.

BISHOP moved.

MITCHELL I will not second the motion. I thought it would be an option, not a requirement, and give the applicant the option of going up to the FAA limit.

BISHOP My intention is to require that as a future option. I would like to see it as a requirement. The motion is *requirement*.

WARNER Motion dies lack of second.

MOTION: Approve per staff recommendation.

MARNELL moved, **HENTZEN** seconded the motion, and it carried (12-1-0). **BISHOP** opposed.

5. **Case No.: CON2006-04** – Ernest Doyan / Frank's Automotive Request Conditional Use for vehicle and equipment sales, outdoor on property zoned "LC" Limited Commercial on property described as;

The South 120 feet of Lot 1, S.H. Sampson Addition, Sedgwick County, Kansas. Generally located on the northeast corner of I-235 and Central Avenue.

BACKGROUND: The applicant is requesting a Conditional Use to allow outdoor vehicle and equipment sales on the south 120-feet of Lot 1, S.H. Sampson Addition, which is zoned "LC" Limited Commercial. The site is located at the northwest corner of Central Avenue and Hoover Street and is currently developed with a five-bay door garage/office, used for limited car and light truck repair. The applicant proposes to retain the site's limited vehicle repair garage, which is permitted by right, and sell pre-owned cars and light trucks. Per the Unified Zoning Code (UZC), outdoor vehicle and equipment sales may be permitted with a Conditional Use in the "LC" zoning district.

Development east and northeast of the site, across Hoover Street, include a small commercial strip containing a drinking and eating establishment (DER) and retail (built in 1969), a small freestanding restaurant (built in 1969) and single-family residences (built in the early 1950s). The nonresidential development is zoned "LC" and the site containing the houses are zoned "TF-3" Duplex Residential and "SF-5" Single-family Residential. Abutting the north side of the subject site there is a vacant self-serving car wash (BZA 26-81, use exception) zoned "LC". North of the car wash there is single-family residential development (built in the early 1950s) zoned "SF-5" and "TF-3". South of the site, across Central Avenue, there is a limited vehicle repair garage (built in 1957) and a Goodwill store, both are zoned "LC". Abutting the west side of the site is the Central – I-235 interchange. This portion of Central, from West Street to the Central - I-235 interchange, is almost striped out with "LC" zoning supporting a mixture of small free standing retail, small retail strips, a few offices, limited vehicle repair garages and some DERs and restaurants. All of these nonresidential developments are "local commercial" type of uses. There are no other car sale lots on this portion of Central. The nearest car sales lots appear to be the Saturn dealership located at Central and Tyler Road and another two dealerships located on West between Douglas Avenue and 3rd Street. These car sales lots are all between 1½-miles to almost 2-miles away from the subject site.

The applicant's site plan shows the existing garage/office (built in 1971), the two existing drives onto Central and the one onto Hoover, an existing pole sign with proposed additional lighting, the parking and display areas with proposed pipe railing around the

display area (along the site's Central frontage) and, per the applicant's calculations, approximately 1,540-square feet of landscaping. A unique feature of the site is that the legal description of the application area cuts through the existing garage/office building, leaving approximately the northern half of it out of the application area. Part of the customer/employee parking is in that northern portion and thus located off of the site. As shown on the site plan, all of the proposed display area for vehicle sales is confined to the application area. If approved, the applicant needs to provide a revised site plan giving more detail including the above mentioned 'split' building, separating the square footage for the garage area and the office area, show that the site can meet the parking requirements for the garage and car sales business, show onsite vehicular circulation, state what plants will be planted and how many and what size with the intent being that their size meets the minimum requirement of the "Landscape Ordinance", state how they will be cared for, show any other proposed lighting, and solid screening around any trash receptacles.

CASE HISTORY: The site is platted as the Lot 1, the S.H. Sampson Addition, which was recorded with the Register of Deeds November 11, 1967. The site is described as the south 120-feet of Lot 1, the S.H. Sampson Addition. The northern remaining portion of Lot 1, the S.H. Sampson Addition has a vacant self-service car wash, per the conditions of BZA27-81. The site was annexed into the city sometime between 1951–1960.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"	Vacant self-service car wash
SOUTH:	"LC"	Car repair garage, limited, Goodwill store
EAST:	"LC"	Small strip retail, free-standing restaurant,
	"TF-3"	single-family residences
WEST:	Public right-of-way	Central Avenue – I-235 interchange

PUBLIC SERVICES: The subject property has access to Central Avenue, a five-lane arterial street and Hoover Street, a paved two-lane residential street. The west side of the site abuts the Central – I-235 interchange. I-235 is a four-lane freeway. Current traffic volumes at this portion of Central are approximately 24,137 vehicles per day. The "2030 Transportation Plan" estimates that traffic volumes at this location will increase to approximately 45,000-46,000 vehicles per day. The "2030 Transportation Plan" indicates improvements for the Central – I-235 interchange and a recent (February 2006) KDOT concept study reaffirms this interchange as a candidate for improvements. Municipal water and sewer services and all other utilities are currently provided to the subject property.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide of the Comprehensive Plan" identifies this site as appropriate for "local commercial" types of use. Medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants, personal service facilities and on a limited basis mini-storage warehouse and light manufacturing are examples of "local commercial" uses. All of these uses would be on a scale that would not have a significant regional draw.

The "Commercial Locational Guidelines of the Comprehensive Plan" recommends that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site has direct access onto Central Avenue, a five-lane arterial. The conditions attached to a Conditional Use can address site design issues. The "Commercial Locational Guidelines" also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg Avenue and Broadway Avenue, or other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. As mentioned the closest car sales lots are approximately 1½ miles to almost 2-miles away from the subject site.

In the past the MAPC has identified smaller car sales lots as being more of a local commercial establishment in their nature, as opposed to the cluster of larger car sales lots located primarily along Kellogg Avenue and Broadway Avenue, which are more regional in their cliental draw. The MAPC has also recommended that buildings that had in the past been used for automobile activities, such as vehicle repair garages, be considered as possible sites for car sales. The applicant's proposal to continue to use the site/building for limited auto repair, while adding the car sales on the site conforms with what the MAPC has recommended for this type of site/use in the past.

RECOMMENDATION: While the site does not entirely meet the "Comprehensive Plan's" criteria of locating car lots in areas where they are already clustered, it does conform with the MAPC's past recommendations of locating smaller car sales lots within sites that had previously been used or continue to be used for auto related businesses. In this case the applicant proposes to retain the permitted by right limited vehicle repair garage, while operating a car sales lot on the same site. The proposed Conditional Use could bring improvements to the site that will include additional landscaping of the site and conforming to the current access control standards. Introduction of a car sales lot into an area can lead to other car sales lots and this is an issue that must be addressed on a site-by-site basis with a Conditional Use application. In this case the subject site is located next to the I-235 – Central interchange with "LC" zoned small local retail development, including another vehicle limited repair garage, on two of its sides. The existing "LC" zoned vacant car wash on its north side is potentially a more intense use then the car sales lot, but provides distance between the car sales lot and the single-family residences north of the site. The subject site and the other vehicle limited repair garage located south of the site, across Central, have unique locations for this portion of Central, in their immediate proximity to the I-235 – Central interchange and that they have other existing "LC" zoned development between them and the nearest residential development. There appears to be no other sites along this portion of Central with these site characteristics, including two other vehicle limited repair garages located west of the subject site and the vehicle limited repair garage located south of the subject site. Both of these other two vehicle limited repair garages are on the west side and abutting the I-235 – Central interchange, but each is either directly adjacent to or abutting "SF-5" zoned single-family residences.

Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED. This recommendation is based on the principle that staff would be only supportive of sites that shared the site characteristics of this site including that they are not abutting or directly adjacent to residential zoning. Recommended conditions of approval include:

1. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of cars and light trucks, as long as it continues to operate as a vehicle repair, limited garage. No sale or rental of trailers, motorcycles or scooters, vehicles or trucks larger than pick ups are permitted.

2. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
3. The applicant shall submit a revised site plan for review and approval by the Planning Director, prior to the selling of any cars or light trucks, within six months of approval by the MAPC or the City Council. The site plan will include, but not be limited to, internal circulation that will remain open at all time and confirms the site meets the parking standards for both the approved car sales lot and the existing vehicle repair, limited garage. The site will be developed according to the revised site plan.
4. The applicant shall install and maintain landscaping in accordance with the landscape plan submitted with the revised site plan, within the nearest planting season and approval by the MAPC or the City Council. The plan shall include what plants will be planted and how many and what size the plants are, with the intent being that their size meets the minimum requirement of the "Landscape Ordinance". The landscape plan will also state how the plants will be cared for and that they will be replaced if they die, within the nearest planting season. The landscaping plan will be reviewed and approved by the Planning Director, prior to issuance of any permits/selling of cars and light trucks.
5. A parking barrier, such as a heavy rail type, shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
6. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons. All other signage will be per the "LC" zoning district.
7. There shall be no use of elevated platforms for the display of vehicles. All vehicles for sale or for repair must be on a concrete, asphalt or an approved all weather surface.
8. No outdoor amplification system shall be permitted.
9. No outside storage of salvaged vehicles or vehicles waiting for repair shall be permitted in association with this use. Outside storage of parts, including tires, associated with the car repair, limited, operation shall be within a 6-foot solid screened area.
10. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted. Outside pole lighting shall be no taller than 14-feet and directed onto the site and away from the residential development north and east of the site.
11. All vehicles associated with the car sales lot shall be located in front of the existing garage/office building located on the south 120-feet of Lot 1, S.H. Sampson Addition; the site. All customer parking will be confined to the south 120-feet of Lot 1, S.H. Sampson Addition; the site
12. All trash receptacles, oil containers or any similar type of receptacles for new or used petroleum products or trash shall have solid 6-foot screening around it. The gate shall be of similar materials as the screening.
13. Dedication by separate instrument of access control closing all but one entrance onto Central Avenue. The entrances shall be reviewed and approved by the Traffic Engineer. The applicant shall guarantee the closure of all but the approved entrances according to City standards.
14. All improvements shall be completed within one year of the approval of the Conditional Use by the MAPC or the City Council. No selling of cars shall be allowed until all permits have been acquired and all improvements to the site have been made.
15. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
16. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the neighborhood is predominately "LC" zoned local retail along both sides of Central Avenue. There are other car repair shops in the immediate area. There are no other car sales lots in the immediate area, the nearest being approximately 1½ miles to almost 2-miles away from the subject site.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial. The property is suitable for the commercial uses to which it has been restricted, including its current use as vehicle repair, limited.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Vehicle sales on a site this size when developed with the Conditional Use, will have a minimum of negative effect on the area and at best improve the property, with the application of additional access control, landscaping, screening and the other conditions on the site.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Commercial Locational Guidelines recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of

Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. A Conditional Use for a car sales lot on this site does not entirely meet the "Commercial Locational" criteria, but it does conform to the MAPC's past recommendation in regards to locating small car sales lots on sites that had previously been used or are still being used for car related businesses. There is no adopted neighborhood plan that would specifically discourage a car sales lot on this site. The Conditional Use conditions do represent an opportunity for encouraging investment and upgrading the property while allowing the applicant the opportunity to expand his business opportunities.

5. Impact on Community Facilities: All public facilities are available. Existing road facilities are adequate. Additional access control onto Central Avenue is an improvement to the area.

BILL LONGNECKER Planning staff presented the staff report.

ALDRICH It shows on the staff report that in the past it has been recommended that businesses like gas stations and auto repair garages are possible sites for car sells. What is the difference between this site and the site at the corner of Zoo Boulevard, and West Street, which to my understanding has been denied car sales in the past.

LONGNECKER The intersection at Zoo and West was considered a gateway to the city and the zoo in particular. At that time staff was not supporting car sales lots that did not conform to the Comprehensive Plan's locational criteria. I don't think the MAPC was as articulate as they are now in finding that these car repair sites could be possible sites for car sales. But primarily staff's objection to that site was that intersection was identified as a gateway into the community, and as such it was a roadway that would leave an impression on the citizens of Wichita and visitors. The fact of the matter is there are cars all over that lot right now waiting on repair and the site is a mess.

ALDRICH It just seems there are a couple of different standards here. Another question I have, is that this particular interchange, for today's case, is definitely going to be a candidate for some major improvement and I wonder, as far as KDOT is concerned, how will that play into the development of this property?

LONGNECKER If there is going to be any impact on this property it is going to affect the current business as well. I would think that the impact on the site is going to about the same for either business, the applicant will have to provide parking for both businesses as well as the improvements listed for car sales. We will need a revised site plan to show final development.

ALDRICH My question should have been to the applicant on that, if they are aware that could have an impact.

LONGNECKER If they weren't they should be now, as the improvements to the interchange are in the staff report.

MITCHELL I seen nothing in staff recommendations on additional right-of-way for Central, the sketch plat or the drawing attached to the application indicates that it is 50-feet now.

LONGNECKER Traffic Engineering did not indicate that was a concern to him at that time because of the possible improvements to the interchange. They were concerned about having two entrances onto Central and that these do not met the current Access Management Policy, and we are asking for one of those to be closed.

MITCHELL A number of applications in this vicinity of Central have made that recommendation that the right-of-way be extended to 60-feet.

LONGNECKER Would you like to make that recommendation, Mr. Mitchell?

MITCHELL No, no, because I don't support it, but I am stating why staff recommends it in some cases and not in others?

LONGNECKER The other cases were not right up on this interchange is the only reason I can think of.

HENTZEN That Central intersection with KDOT is a long way off and as I see this application I want to agree with staff. The applicant is not building any new buildings, they are merely trying to use the property as it is with the current zoning classification and trying to do a little more business.

BISHOP I note that the DAB doesn't meet until next week.

LONGNECKER Correct that will be Monday, March 6th.

GREG FERRIS, FERRIS CONSULTING We understand that someday, hopefully, that this interchange will be upgraded. The improvements that we are going to make to this are really only landscaping and striping, so the impact that it will have to us if they take this property or to the cost of the City or to KDOT will be insignificant. I think this parcel is different from the Zoo Boulevard site and the adjacent properties. At that corner there is a railroad to one side and you don't have light commercial businesses all around it. At this site there is significant buffering from any residential properties, including the car wash, which is a more intensive use and which was allowed several years prior to this application. What we are recommending is an upgrade to this area and with the landscaping it will make this area look more attractive.

I did meet with Council member Sharon Fearey and though she can't give any opinion, she did mention that there were several things that she had issue with on car lots including the flashing signs and the total square footage of the existing sign. We also added a provision that we will limit this to 15 vehicles making this a very small lot. I spoke with the applicant about this site not being on Broadway or Kellogg and that we will need to do certain things that will make it easier for the public to understand that this is not an intrusive use. So when you limit the number of cars, add landscaping, restrict signage you impact in a positive way and that was our goal.

We do have an issue regarding the Access Management Policy, is requiring that we remove the driveway that is furthest to the west. Now if you could see on the site plan, we are going to put landscaping across that driveway, we are going to have a parking barrier on that driveway, we did not want to close off that driveway. It is fairly expensive to do that, also we did recognize that some day in the future you are going to come and take this property for this interchange and we didn't see a need to go to the additional expense to close off this driveway per the City's standards. Finally there is some additional right-of-way there and if the City did widen that they would do that on their own at that time.

We request that the dedication by separate instrument be removed, number 13, and that we will conform with the site plan, which will close that by barracking that with a parking barrier. We would prefer not close it by dedicating access control, but if MAPC requires it, we will.

ALDRICH Item 13, would staff agree to the applicant's proposal?

LONGNECKER We would like the site to conform to the Access Management Policy which would require one of the drives to be closed and that would be the far West one.

ALDRICH Staff is recommending the far West access?

LONGNECKER Right, there is a lot of back up at this interchange, and the applicant has a drive off of Hoover Street which has a stop sign, which moves traffic onto Central further away from the interchange itself. The backup from the interchange will block traffic from the site's west entrance.

JOHN SCHLEGEL Greg, on Item 13, is it the dedication of the access control that you object to or all of the statements to that condition? You are really not objecting to the closing of the driveway.

FERRIS We plan to close it, we didn't want to close the west access and there are some logistical traffic flow reasons, why we didn't want to do that. The staff report just says one entrance, and I assumed since my drawing showed the far east one being closed that would have been acceptable. We do not want to close the west entrance, as far as flow of traffic it would really be an issue on that lot trying to move traffic through if we close the west entrance, instead of the east entrance.

SCHLEGEL Would you object to having this item deferred two weeks, while you work this out with Traffic Engineering?

FERRIS That would be all right, that would allow us to go to DAB and they may have some other suggestions.

ALDRICH I do live in that area, and I can tell you that very few vehicles use that west driveway to try and get out of it because of the congestion of that traffic right there.

FERRIS We're thinking that traffic will ingress there and egress out, the problem with closing the west entrance is that right now he has a major problem with people using his driveway as access to Central to avoid the stop sign. By closing the east driveway we eliminate that problem.

MOTION: To defer and we will continue the public hearing in two weeks.

MITCHELL moved, **ALDRICH** seconded the motion, and it carried (12-0).

❖ **PLANNING COMMISSION ITEM**

6. **Case No.: CUP2005-49 DP288 and ZON2005-46** – Wal-Mart Real Estate Business and Wal-Mart Stores (collectively) (Owner); Spear and McCaleb Co, PC, c/o Terence L. Haynes (agent) Request to determine if an amended application complies with the successive application requirements of the Unified Zoning Code on property described as;

Tract I:

Lot 1, Block A, MAIZE STATE BANK ADDITION to Sedgwick County, Kansas.

Tract II:

A tract in the Southeast Quarter of Section 13, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as the East 675.07 feet of the South 1,454 feet thereof, except the South 375 feet of the East 375 feet thereof, and except roads.

Tract III:

A tract of land located in the Southeast Quarter of Section 13, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, being more particularly described as follows:

Commencing at the Southeast corner of said Southeast Quarter; Thence North 89 degrees 57'37" West, along the South line of said Southeast Quarter, a distance of 675.07 feet to the Point of beginning; Thence continuing North 89 degrees 57'37" West, along the South line of said Southeast Quarter, a distance of 220.53 feet; Thence North 00 degrees 48'32" West, parallel with the East line of said Southeast Quarter, a distance of 1454.00 feet; Thence South 89 degrees 57'37" East, parallel with the South line of said Southeast Quarter, a distance of 220.53 feet; Thence South 00 degrees 48'32" East, parallel with the East line of said Southeast Quarter, a distance of 1454.00 feet to the Point of Beginning. Generally located On the northwest corner of Meridian Avenue and 53rd Street North.

The requested zone change, ZON2005-46, from "SF-20" Single-family Residential to "LC" Limited Commercial, and the creation of a community unit plan, CUP2005-49 DP-288 Meridian Valley Community Unit Plan was denied by Wichita City Council. The latest advertised public hearing date for this case was held on November 3, 2005.

March 2, 2006

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The Wichita-Sedgwick County Unified Zoning Code ("UZC" states,

"In the event that the Governing Body denies an application for an amendment to the Official Zoning Map, ... a similar application shall not be refiled for one year from the latest advertised public hearing date on said application. The Planning Commission may permit a refiling of said application after six months of the latest advertised public hearing date when it determines that significant physical, economic or land use changes have taken place within the immediate vicinity, or a significant zoning regulation text change has been adopted, or when the reapplication is for a more restrictive change in zoning classification or is significantly different than the original request. The applicant shall submit a statement in detail setting out those changes which he or she deems significant and upon which he or she relies for refiling the original application." (UZC, Article V, Section V-C.11)

The applicant is asking permission to waive the one-year requirement and refile six months after the latest advertised public hearing. A statement from the agent for the applicant is attached setting forth the grounds for refiling.

Recommended Action:

1. Waive the one-year requirement based on the statement submitted by the applicant setting forth changes deemed significant and upon which the application relies for refiling.

February 24, 2006

Donna Goltry
Wichita Area Planning Dept
455 N. Main
Wichita, KS 67202

Ms. Donna Goltry

We hereby request that the Metropolitan Area Planning Commission review this revised Community Unit Plan and associated zoning request to determine that this is a "significantly different" request than the previous Meridian Valley C.U.P. (DP-288). We are requesting this review per Article V, Section V-E, 11 entitled Successive Applications, to enable us to submit a new Community Unit Plan which encompasses a much larger request and provides a much clearer long term development plan.

I have attached the expanded development plan to be entitled Northgate Commercial Park C.U.P. As you can tell there is a substantial change from the previous plan. We have increased the size of the C.U.P. to approximately 82 acres which encompasses the previous Meridian Valley C.U.P. By including the original small request into a larger development, we are able to provide a much more comprehensive and detailed picture as to the future development of this area. Please refer to the Northgate Commercial Park C.U.P. for specific details. When it is determined that we are able to file within a 6 month period, we will fine tune all the general provisions to be reviewed at the future public hearing.

Ms. Donna Goltry
Page 2 of 2

This Northgate Commercial Park C.U.P. will allow us to better study the overall drainage of the area and provides a comprehensive solution to any drainage concerns. In addition this C.U.P. will enable us to better analyze the overall traffic in the area and provide long term solutions such as turn lanes, traffic signals and adequate rights-of-way to enable the City of Wichita to utilize our data to better plan and construct necessary long term transportation enhancements in this area.

It is our impression that the purpose of this request is for the Metropolitan Area Planning Commission to determine if there is a "significant change" from the previous request.

If you have any questions please give me a call.

Sincerely,

Sincerely,
Baughman Company PA

Terrence T. Smythe



NORTHGATECO
NMCUP PG11.pdf



NORTHGATECO
NMCUP PG21.pdf

DUNLAP I have a question for Law Department, Joe we are obviously being taped, it is a requirement that we know who it is that is taping this hearing besides the MAPC recording secretary?

JOE LANG, LAW DEPARTMENT No.

DONNA GOLTRY Planning staff presented staff report.

ALDRICH This could be heard again within six months or sooner?

GOLTRY No, they would refile the case. They would be refiling a case that looks somewhat more like the plan that I have up on the screen today, and they would be refiling that 6 months after the latest public hearing advertised date.

JAY RUSSELL, OWNER I think the request and our letter is pretty self-explanatory. We have gone from the original 27 acres that was requested on the far east side, of this side, to where now we included all of the rest of the ground that goes clear over to Sheridan, which encompasses about 80 acres. So we think it is a substantial change. Our date is approximately the first week in May, if approved, that we can re-file.

MOTION: That we grant the request of the applicant and waive the one-year requirement based on the statement submitted by the applicant setting forth changes deemed significant and upon which the application relies for refiling.

DUNLAP moved **HENTZEN** seconded.

HILLMAN I have a couple of questions. Even though the MAPC supported this item the last time, the City Council denied the application. By changing the parcel, it appears to be a new package, but the interference with the neighborhood does not appear to be changed. My question would be why do we think that the result would be different the second time?

HENTZEN We are not discussing that today. We are discussing the application that fits. I would like not to get into some finer discussion until the application is filed and we can have a public hearing.

MOTION CARRIES 13-0.

The Metropolitan Area Planning Department informally adjourned at 2:47 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2006.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)